

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Number: **201508001**

Release Date: 2/20/2015

Index Number: 457.00-00; 457.09-00;
457.09-08

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP2
PLR-119863-14

Date:
November 7, 2014

Plan =

City C =

State S =

Date 1 =

Statute X =

Dear :

This letter responds to your authorized representative's letter and subsequent correspondence, on behalf of City C and its Plan, requesting rulings related to the Plan's status as a length of service award plan (LOSAP) described in section 457(e)(11)(B) of the Internal Revenue Code of 1986 (Code). City C is represented to be an eligible employer described in section 457(e)(1).

City C of State S established the Plan in order to provide length of service awards in the form of retirement, death, and disability benefits to long-term eligible volunteers providing qualified services to fire departments and rescue services in City C. The volunteer firefighters who participate in the Plan provide fire protection and prevention services as well as emergency medical services and response to emergency management situations. Under the Plan, benefits are provided only to volunteers who receive no compensation for providing such services other than reimbursement for (or a

reasonable allowance for) reasonable expenses incurred in the performance of such services, or reasonable benefits (including benefits under the Plan) and nominal fees for such services, customarily paid by eligible employers in connection with the performance of such services by volunteers.

The Plan further provides that benefits are available only to persons whose names are carried as volunteer firefighters on the active membership roll of City C's volunteer firefighters. To be carried on the active membership roll, a volunteer must meet the criteria and standards established by the fire chief. The Plan covers members who meet the eligibility criteria as of the Plan's effective date, Date 1, as well as all future new members.

The Plan is intended to be funded solely by contributions from State S. However, the Plan requires City C to make quarterly contributions to the Plan's trust fund when (and in the amount) indicated by the applicable actuarial valuation of the Plan.

Once a member has met the Plan's age and service requirements, the member is entitled to a monthly benefit in an amount determined under the Plan. The Plan also includes provisions for a reduced, early retirement benefit. In addition to the monthly retirement benefit, each member receives a supplemental benefit, funded exclusively by a portion of the existing excess State S premium tax reserve and future premium tax revenues received by the Plan pursuant to Statute X. The Plan provides with respect to any year of credited service that the aggregate amount of length of service awards, including all benefits under the Plan, such as retirement, disability, and supplemental benefits, shall not exceed \$3,000.

The Plan provides that all assets of the trust or in the Statute X tax revenues will remain solely the property and right of City C or State S, as applicable, subject only to the claims of City C or State S's general creditors, until made available to the member or the member's beneficiary. The rights of any member or beneficiary to payments under the Plan are nonassignable and nontransferable.

Section 451(a) of the Code and section 1.451-1(a) of the regulations provide that an item of gross income is includible in gross income for the taxable year in which actually or constructively received by a taxpayer using the cash receipts and disbursements method of accounting. Under section 1.451-2(a) of the regulations, income is constructively received in the taxable year during which it is credited to the taxpayer's account, set apart, or otherwise made available so that the taxpayer may draw on it at any time. However, income is not constructively received if the taxpayer's control of its receipt is subject to substantial limitations or restrictions.

Various revenue rulings have considered the tax consequences of nonqualified deferred compensation arrangements. Rev. Rul. 60-31, Situations 1-3, 1960-1 C.B. 174, holds that a mere promise to pay, not represented by notes or secured in any way, does not

constitute receipt of income within the meaning of the cash receipts and disbursements method of accounting. See also, Rev. Rul. 69-650, 1969-2 C.B. 106, and Rev. Rul. 69-649, 1969-2 C.B. 106.

Section 457 of the Code governs the taxation of eligible deferred compensation plans of eligible employers. The term “eligible employer” is defined in section 457(e)(1) as a state, political subdivision of a state, and any agency or instrumentality of a state or political subdivision of a state, and any other organization (other than a governmental unit) exempt from tax under subtitle A of the Code. An “eligible deferred compensation plan” as defined in section 457(b) must, among other things, provide that the maximum amount which may be deferred under the plan for a taxable year shall not exceed the lesser of the applicable dollar amount (which is \$17,500 for 2014) or 100 percent of the participant’s includible compensation.

Section 457(f)(1)(A) provides that if a plan of an eligible employer providing for a deferral of compensation is not an eligible deferred compensation plan, compensation deferred under such plan shall be included in the participant’s gross income for the first taxable year in which there is no substantial risk of forfeiture of the rights to such compensation.

Section 457(e)(11)(A)(ii) provides that a plan paying solely length of service awards to bona fide volunteers or their beneficiaries on account of qualified service performed by such volunteers is treated as not providing for the deferral of compensation under section 457. Section 457(e)(11)(C) defines qualified services as fire fighting and prevention services, emergency medical services and ambulance services.

Section 457(e)(11)(B) provides special rules applicable to a LOSAP. Section 457(e)(11)(B)(i) defines the term “bona fide volunteer” to include only persons whose only compensation received for performing qualified services are reimbursements for (or reasonable allowances for) reasonable expenses incurred in performing such services or reasonable benefits (including length of service awards) and nominal fees for such services, customarily paid by eligible employers in connection with the performance of such services by volunteers.

Section 457(e)(11)(B)(ii) provides that a LOSAP may not provide for an aggregate amount of length of service awards accruing with respect to any year of service by a volunteer that exceeds \$3,000.

The Plan established by City C satisfies the requirements of section 457(e)(11)(A)(ii). The Plan applies only to volunteers who provide qualified services as defined in section 457(e)(11)(C), i.e., fire fighting and prevention services, emergency medical services, and ambulance services. The Plan also satisfies section 457(e)(11)(B)(i) by limiting eligible volunteers to persons who receive no compensation for their services other than reimbursements for reasonable expenses, nominal fees, or reasonable benefits

customarily paid by eligible employers in connection with the performance of qualified services by volunteers. Finally, the Plan satisfies section 457(e)(11)(B)(ii) by limiting the aggregate amount of awards for any year of service to \$3,000.

Since the Plan qualifies as a LOSAP under section 457(e)(11)(A)(ii), neither section 457(a) nor section 457(f) apply to benefits under the Plan. Instead, amounts distributable under the Plan are includible in gross income under section 451 and the regulations thereunder, when paid or made available without substantial limitation or restriction.

Section 3121(a)(5)(I) provides that any payment made to, or on behalf of, an employee or his beneficiary under a plan described in section 457(e)(11)(A)(ii) and maintained by an eligible employer as defined in section 457(e)(1) is not treated as "wages" for purposes of determining whether the Federal Insurance Contribution Act (FICA) tax applies to such payment.

In light of the original documents and information presented on May 9, 2014, including the relevant State S statutory provisions, the proposed restated Plan submitted on November 7, 2014 (which it is represented will be adopted by City C), and the other representations made, we conclude as follows:

1. City C's Plan constitutes a LOSAP described in section 457(e)(11)(B) of the Code. Therefore, the Plan is not subject to sections 457(b) or (f) of the Code.
2. Amounts paid to members under the Plan are not wages for purposes of FICA tax, pursuant to section 3121(a)(5)(I).
3. Amounts paid or otherwise made available to eligible members under the Plan are includible in the recipient's gross income in accordance with section 451 only in the taxable year(s) when such amounts are paid or otherwise made available.

No opinion is expressed concerning the timing of the inclusion in income of amounts deferred under any deferred compensation plan other than the Plan described above. The information contained in the letter ruling is based on the information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. If the Plan is significantly modified, this ruling will not necessarily remain applicable.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Cheryl E. Press
Senior Counsel, Qualified Plans Branch 2
(Employee Benefits)
(Tax Exempt & Government Entities)

Enclosure
Copy for purposes of section 6110

cc: